



U.S. Office of Personnel Management

October 29, 2001

Frequently Asked Questions on Military Leave

Q1: Is a Federal employee who is called to active duty as a member of the National Guard or Reserves entitled to military leave?

A1: Yes. A Federal employee who is a member of the National Guard or Reserves is entitled to 15 days (120 hours) of paid military leave under 5 U.S.C. 6323(a) each fiscal year for active duty, active duty training, or inactive duty training. An employee on military leave under section 6323(a) receives his or her full civilian salary, as well as military pay. This leave accrues at the beginning of each fiscal year, and all Guard or Reserve members, including those on extended active duty, should have been credited with an additional 15 days of paid military leave on October 1, 2001.

An agency now may charge military leave only for hours the employee otherwise would have worked. An employee no longer "loses leave" on weekends and other nonworkdays and will be paid his or her full civilian pay for all 120 hours. (See fact sheet on Military Leave at <http://www.opm.gov/oca/leave/HTML/military.HTM>. This guidance does not apply to employees of the U.S. Postal Service.) Employees also are entitled to use any accrued or accumulated annual leave for periods of active military duty. Employees using annual leave will receive their full civilian pay, as well as compensation for their military service.

Q2: May an employee on active duty or active/inactive duty training choose to use annual leave or military leave intermittently with leave without pay each pay period to maintain sufficient income?

A2: Yes. OPM's regulations at 5 CFR 353.208 implementing the Uniformed Service Employment and Reemployment Rights Act (USERRA) state that an employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual or military leave during such service. An employee is entitled to use annual leave or military leave intermittently with leave without pay while on active duty or active/inactive duty training.

Q3: When are employees eligible for the additional 22 days of military leave to support civil authorities in the protection of life and property?

A3: Reservists or National Guard members who perform military duty in support of civil authorities in the protection of life and property are eligible for an additional 22 workdays of military leave under 5 U.S.C. 6323(b). An employee is eligible for the additional 22 days of leave only when activated for full-time military duty under sections 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or when activated for full-time military service for his or her State. We have conferred with the Office of the Assistant Secretary of Defense for Reserve Affairs and determined that military orders based on 10 U.S.C. 12301(d) or 12302, which cover most of the National Guard members and Reservists called up under Presidential authority, are not entitled to the additional 22 days. Each agency must determine on a case-by-case basis whether an employee is being activated in support of civil authorities. Agencies may ask for military orders or any other evidence (such as a statement by the appropriate military command) to make this determination.

Q4: I have an employee who is a military policeman in the Reserves. He is being activated to perform base security at Andrews AFB. Is he entitled to the additional 22 days of military leave?

A4: No. Although the employee is being activated to protect life and property (in this case Andrews AFB), he is supporting military activity on an Air Force base and will not be working in support of civil authorities.

Q5: I have an employee who is a member of the National Guard. His unit has been activated, at the request of the Governor of his State, to provide additional security at local airports. Is he entitled to the additional 22 days of military leave?

A5: Yes. The President has authorized the Governors of several States and territories to use National Guard forces to provide supplemental security personnel for airport operations. Guard members ordered to such duty under 32 U.S.C. 502(f) are clearly assisting civil authorities in the protection of life and property. Therefore, in addition to military leave available under 5 U.S.C. 6323(a) for active duty and active and inactive duty training, a member of the National Guard also may be authorized military leave under 5 U.S.C. 6323(b) for assisting civil authorities in the protection of life and property.

Q6: Are employees entitled to both their military and civilian pay during periods of military leave to support civil authorities in the protection of life and property (i.e., during the 22 days of military leave available under 5 U.S.C. 6323(b))?

A6: No. Under 5 U.S.C. 5519, the military pay received by an individual who has been activated to support civil authorities in the protection of life and property must be credited (less any travel, transportation, or other per diem allowances) against any Federal civilian pay the employee received during the 22 workdays of military leave. An agency may calculate the amount of military pay (less any travel, transportation, or per diem allowances) an employee will receive for the time period that corresponds to the 22 workdays of military

leave and reduce the employee's civilian pay by that amount during the 22 workdays of military leave. In contrast, many agencies choose to continue to pay the employee his or her full civilian pay during the 22 workdays of military leave. At the end of the 22-day period of military leave, the agency requires the employee to refund to the agency an amount equal to the amount of military pay received (less any travel, transportation, or per diem allowances) for the time period that corresponds to the 22 workdays of military leave.

The days for which military pay is paid will not correspond exactly with the 22 workdays of military leave taken as a Federal civilian employee. Military leave is to be granted only for workdays, and the civilian pay of the employee will be reduced only by the amount that he or she receives for military service on the workday. The employee's military pay will include pay for weekends and other civilian nonworkdays. The civilian pay will not be reduced by any amount the individual may receive for military service for days that are not workdays, nor will civilian pay be reduced by any amounts received for travel, transportation or per diem allowance incident to the military service. (See Comptroller General opinion B-133972, October 14, 1969.) Agencies may ask an employee to provide any necessary information on military pay in order to offset his or her military pay.

Q7. May a Federal civilian employee who has been called to active duty continue to work as a civilian at his or her Federal agency?

A7. No. The Comptroller General has ruled that an individual on active duty military service may not be employed in a civilian capacity with the Government. The Comptroller General has held that the rendition of services to the Government in a civilian capacity by a member of the armed services on active duty is incompatible with the member's actual or potential military duties and payment for such services is not authorized in the absence of specific statutory authority. This is the case even though the civilian services are rendered during the military member's hours of relaxation or time provided to attend to personal affairs. (See 64 Comp. Gen. 395, 399-400 (1985), and 47 Comp. Gen. 505-506 (1968).)

Q8. Is a member of the National Guard of the District of Columbia eligible for additional military leave under 5 U.S.C. 6323(c)?

A8. Yes. However, military leave under 5 U.S.C. 6323(c) may be used only for limited purposes. A Federal civilian employee who is also a member of the DC National Guard is entitled to additional military leave as provided in 5 U.S.C. 6323(c) to participate in a "parade or encampment." The law provides that this type of duty must be authorized under title 39 of the District of Columbia Code. Generally, this category of military leave is limited to drills and training under the authority of the Commanding General of the DC National Guard and is not appropriate for extended active duty in connection with the current national emergency.